



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Manza Arthur
Supervisor of Records

May 21, 2024
SPR24/1544

Mr. Jonathan Gerhardson
VIA EMAIL
MA

Dear Mr. Jonathan Gerhardson:

I have received your letter appealing the response of the Norwood Light and Broadband Department to your request for records.

I have directed a member of my staff, Thomas Lynn, to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Manza Arthur".

Manza Arthur
Supervisor of Records

cc: Supt. Kevin Shaughnessy

Pierce, Patrick (SEC)

From: Jon Gerhardson <jon.gerhardson@gmail.com>
Sent: Monday, May 20, 2024 7:28 PM
To: SEC-DL-PREWEB
Subject: Request for appeal: May 9 request to Town of Norwood / Norwood Electric Light
Attachments: PUBLIC RECORDS REQUEST May2024.doc; FW PUBLIC RECORDS REQUEST telecom services logs requests.eml

Supervisor of Records,

I'm writing to appeal the response I received to a public records request filed to clerk@norwoodma.gov on May 9, 2024.

I asked for the following:

- Warrants, subpoenas, or other requests for logs of internet traffic, its metadata, or other information generated through the use of Norwood Light and Broadband as an internet service provider from any person, agency, or other source made between May 1 2023 and May 1 2024. (Please exclude any self-requesters; i.e. a customer requesting a copy of their own internet traffic.)

- All communications between Norwood Light and Broadband and the requestors of this information.

- Note that I myself am not requesting any customer logs, nor do I believe such logs would be considered public records, except perhaps in the case of legally served warrants (I'm not sure about that one). In any case, I'd prefer at this time to not be provided with any actual logs of customers.

In response, Rich O'Reily, Broadband Manager of Norwood Municipal Light Department wrote the following (full response attached.)

Please be advised that by law, the Norwood Municipal Light Department ("NMLD") cannot confirm or deny the receipt of any warrants or subpoenas. To the extent your request encompasses other types of requests and communications, NMLD has no documents responsive to your request.

I do not believe that Massachusetts law provides for any agency to invoke the "Glomar" response to a request for records, and Mr. O' Riely has erred in doing so. I can find no precedent for this sort of NCND response being a valid response to a request for records under MGL c66 sec 10.

Furthermore, even if this were a request to a federal agency under the Freedom of Information Act, I would not find Mr. O' Riely's response sufficient as I believe he would have a duty to demonstrate either that acknowledging the (non)existence of a particular record would either compromise national security, or constitute an unwarranted invasion of privacy to an individual.

To the extent that Norwood Electric Light is not a top secret classified facility, I have trouble believing the former. As to the latter my request makes clear that any responsive documents would not constitute an invasion of privacy.

All of this is purely hypothetical of course, because I have not filed a FOIA, and I do not believe that a NCND response is under any circumstance a valid response to a request made under the Massachusetts Public Records Law.

It is especially not a valid response for Norwood to claim it "cannot confirm or deny the receipt of any warrants or subpoenas" because warrants and subpoenas are in fact public records.

Furthermore, I would like to note that the wording of my request was altered by Norwood in their response.

The second and third bulleted point in my original response have been combined to read:

- All communications between Norwood Light and Broadband and the requestors of this information.

The request expressly encompasses only the requests for such information and not the customer logs or data.

While from an editorial point of view my phrasing of "*Note that I myself am not requesting any customer logs . . . , I'd prefer at this time to not be provided with any actual logs of customers.*" is admittedly a bit of a mouthful, I do not understand why Norwood went to the trouble to change it, and remove the line break.

The Norwood edit could be construed to mean that a communication between the municipality and a requester, where the entirety of the content of the communication was customer logs or data, would be beyond the scope of my request, while in my original phrasing I believe such record would be responsive, with any data and logs redacted to the extent necessary by law.

See attached for the original request and response.

Thank you for your time.

Best,
Jonathan Gerhardson



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info@norwoodlight.com
136 Access Rd.
Norwood, MA 02062

Serving Norwood with Electric, Telephone, Cable & High Speed Internet Service

By Email

Jon Gerhardson

Email: jon.gerhardson@gmail.com

RE: Public Records Request

Dear Mr. Gerhardson:

I am in receipt of your public records request, dated May 9, 2024, seeking the following documents.

- Warrants, subpoenas, or other requests for logs of internet traffic, its metadata, or other information generated through the use of Norwood Light and Broadband as an internet service provider from any person, agency, or other source made between May 1, 2023 and May 1, 2024 (excluding any self-requesters; *i.e.* a customer requesting a copy of their own internet traffic); and
- All communications between Norwood Light and Broadband and the requestors of this information.
The request expressly encompasses only the requests for such information and not the customer logs or data.

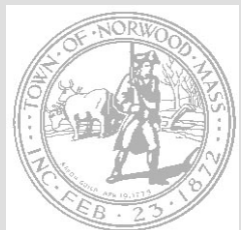
Please be advised that by law, the Norwood Municipal Light Department ("NMLD") cannot confirm or deny the receipt of any warrants or subpoenas. To the extent your request encompasses other types of requests and communications, NMLD has no documents responsive to your request.

In accordance with 950 CMR 32.06(3), you are hereby informed of the right of administrative appeal to the Supervisor of Public Records under 950 CMR 32.08(1) and the right to seek judicial review of an unfavorable decision by the Supervisor of Public Records by commencing a civil action in the Superior Court.

Very truly yours,

A handwritten signature in cursive script that reads "Rich O'Reilly".

Rich O'Reilly,
Broadband Manager



Pierce, Patrick (SEC)

From: Jon Gerhardson <jon.gerhardson@gmail.com>
Sent: Monday, May 20, 2024 3:53 PM
To: Rich O'Reilly
Subject: Re: FW: PUBLIC RECORDS REQUEST: telecom services logs requests

Rich,

Respectfully I believe you are mistaken with regards to your Glomar response. This is not applicable to MGL c66 sec. 10. You must list all with held documents, the specific exemptions under which you are withholding them in part or whole, and the reason the exemption is applicable.

In order to save everyone some extra paperwork, I will wait to file an appeal until 6 PM today.

Best,
Jonathan Gerhardson

On Mon, May 20, 2024, 3:46 PM Rich O'Reilly <roreilly@norwoodlight.net> wrote:

Hello Mr. Gerhardson,

In response to your request, please find the attached document.

Best regards,
Rich O'Reilly

Rich O'Reilly I Broadband Manager I Norwood Light And Broadband I 136 Access Rd, Norwood, MA 02062

----- Forwarded message -----

From: **Jon Gerhardson** <jon.gerhardson@gmail.com>
Date: Thu, May 9, 2024 at 2:23 AM
Subject: PUBLIC RECORDS REQUEST: telecom services logs requests
To: <clerk@norwoodma.gov>

Dear RAO,

This is a request under the Massachusetts Public Records Law (M. G. L. Chapter 66, Section 10). I am requesting that I be provided a copy of the following records:

- Warrants, subpoenas, or other requests for logs of internet traffic, its metadata, or other information generated through the use of Norwood Light and Broadband as an internet service provider from any person, agency, or other source made between May 1 2023 and May 1 2024. (Please exclude any self-requesters; i.e. a customer requesting a copy of their own internet traffic.)

- All communications between Norwood Light and Broadband and the requestors of this information.

- Note that I myself am not requesting any customer logs, nor do I believe such logs would be considered public records, except perhaps in the case of legally served warrants (I'm not sure about that one). In any case, I'd prefer at this time to not be provided with any actual logs of customers.

This request is non-commercial in nature, and I kindly request that any fees which may be assessed pursuant to the Public Records Law be waived, as recommended by the Secretary of the Commonwealth. If this is not possible, please provide a reasonable estimate of the cost to fulfill this request.

The Public Records Law requires you to provide me with a written response within 10 business days. If you cannot comply with my request, you are statutorily required to provide an explanation in writing. Please provide these records in a digital format by email attachment sent to jon.gerhardson@gmail.com.

Thank you.

Sincerely,

Jonathan Gerhardson

jon.gerhardson@gmail.com